FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 138

Z. M. McCARROLL, Commissioner of Revenues of the State of Arkansas,

Appellant,

vs.

DIXIE GREYHOUND LINES, INC.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT AS TO JURISDICTION.

Amos M. Mathews,
Frank Pace, Jr.,
Louis Tarlowski,

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Z. M. McCARROLL, COMMISSIONER OF REVENUES OF THE STATE OF ARKANSAS,

vs. *Appellant,*

DIXIE GREYHOUND LINES, INC.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT, UNITED STATES.

The above named Z. M. McCarroll, Commissioner of Revenues of the State of Arkansas, at the time of filing and presenting his petition for appeal to the Supreme Court of the United States from the decision entered against him in this cause by the United States Circuit Court of Appeals, Eighth Circuit, on the 25th day of February, 1939, and the order of said court overruling his petition for a rehearing, files and presents to said court this statement that the basis of the jurisdiction of the Supreme Court of

the United States to review said decision and order upon appeal is the following:

(a) The statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States are Paragraph (b) of Section 240, Judicial Code, Title 28, U. S. C., Section 347(b).

(b) The validity of Act 67 of the General Assembly of Arkansas of 1933, page 194, and of part of Act 11 of the Special Session of the General Assembly of Arkansas of 1934, page 28, are involved in this cause. The pertinent provisions of said Acts are set out *verbatim* on pages 3-4 of this statement.

(c) The decision of the United States Circuit Court of Appeals, Eighth Circuit, sought to be reviewed, was filed on the 25th day of February, 1939 (101 F. (2d) 572). A copy of the decision is hereto annexed. Thereafter a petition was filed by Z. M. McCarroll, Commissioner of Revenues of the State of Arkansas, for a rehearing, and an order was entered denying said petition on March 21, 1939. The order allowing this appeal to the Supreme Court of the United States was made by a judge of the United States Circuit Court of Appeals, Eighth Circuit, on the 13th day of May, 1939.

Dixie Greyhound Lines, Inc. commenced this action on October 31, 1934, in the United States District Court for the Eastern District of Arkansas, Western Division, by filing its petition asking that the then Commissioner of Revenues of the State of Arkansas be enjoined from enforcing against it the provisions of said Acts, on the ground that said Acts, as the said Commissioner was attempting to apply them to the plaintiff, violated the Commerce Clause, Article 1, Section 8, Clause 3, and the Due Process Clause of the Fourteenth Amendment, of the Constitution of the United States. The District Court, after trial, dismissed

plaintiff's petition on the merits and sustained the validity of the statutes in question. 22 Fed. Supp. 985.

The Circuit Court of Appeals filed its decision reversing the judgment of the District Court on February 25, 1939, and in said decision held that said statutes violate the Commerce Clause; and that is the judgment appealed from in this appeal.

New York v. *Latrobe*, 279 U. S. 421, sustains the jurisdiction of the Supreme Court in this appeal.

The said Act 67 of the General Assembly of Arkansas of 1933, page 194, is the following:

"An Act to Better Enforce the Gasoline Tax, and for other Purposes.

Be It Enacted By The General Assembly Of the State of Arkansas:

Be It Enacted By The People of the State of Arkansas:

SECTION 1. On and after the passage of this Act it shall be a violation of the law for any person, co-partnership or company to drive or cause to be driven into the State of Arkansas any automobile or truck carrying over twenty (20) gallons of gasoline in the gasoline tank of such automobile or truck or in auxiliary tanks of said trucks to be used as motor fuel in said truck or motor vehicles until the state tax thereon has been paid.

SECTION 2. Any person, co-partnership or company violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding one hundred ($100) Dollars. Each load carried into the state shall constitute a separate offense.

SECTION 3. All laws and parts of laws in conflict herewith are hereby repealed. It is ascertained that this Act is necessary to better enforce the gasoline collection laws and said Act being necessary for the immediate preservation of the public peace, health and

safety, an emergency is hereby declared to exist and this Act shall take effect and be in full force from and after its passage.

Approved: March 2nd, 1933."

The pertinent parts of Act 11 of the Special Session of the General Assembly of Arkansas for 1934, page 28, are the following:

"A Bill for an Act to Be Entitled: 'An Act to Refund Highway and Toll Bridge Obligations of the State and Road Improvement District Obligations; to Provide for the Payment and/or Funding of Certificates Issued in Aid of Municipal Improvement Districts; to Provide for the Funding and/or Payment of Claims Against the State Highway Commission, and for Other Purposes.'

SECTION 22. Paragraph (c) of Section 1 of Act No. 63 of the General Assembly, approved February 25, 1931, is amended to read as follows:

'(c) There is hereby levied a privilege or excise tax of six and one-half cents on each gallon of motor vehicle fuel as defined in this Act, sold or used in this State or purchased for sale or use in this State.'

SECTION 25. Section 2 of Act No. 63 of the General Assembly, approved February 25, 1931, is amended to read as follows:

'SECTION 2. The purpose of this Act is to provide for the payment and collection of an excise or privilege tax on the first sale of motor vehicle fuels when sold, or the use when used in this State; double taxation is not intended. Motor vehicle fuel manufactured, produced or compounded in or imported into this State and subsequently sold for exportation, is not taxable.' "

The Supreme Court of Arkansas in Sparling v. Refunding Board, 189 Ark. 189, 71 S. W. (2d) 182, construed the

said Act 11 to impose a privilege tax for the use of the highways.

The Circuit Court of Appeals based its decision solely upon its opinion that the statutes in question violate the Commerce Clause. But out of an abundance of caution and for the purpose of meeting any possible contention that the decision can be sustained on a non-Federal ground, the following is stated:

Paragraph (c) of Section 1 of Act No. 63 of the General Assembly of Arkansas of 1931, page 171, approved February 25, 1931, which was amended and re-enacted by Section 22 of said Act 11, is the following:

> "(c) There is hereby levied a privilege tax of six cents (6¢) on each gallon of motor vehicle fuel sold in the State, or purchased for sale in the State for the purpose of propelling any motor vehicle on the public roads or highways in the State."

The said Act 67 of the General Assembly of 1933 has the effect of imposing the gasoline tax upon all gasoline in excess of twenty gallons brought into the State in the fuel tanks of any automobile or truck. Solely to fix the *amount* of the tax it is necessary to refer to Section 22 of said Act 11 of the Special Session of the General Assembly of Arkansas of 1934. A reference to said Section 22 and to the above quoted Paragraph (c) of Section 1 of Act No. 63 of 1931, which said Section 22 amended and reenacted, shows that it was the intent of the Legislature in said Act 67 of 1933 to impose the gasoline tax as fixed in *amount* by other statutes upon all gasoline in excess of twenty gallons brought into the state in the fuel tanks of any motor vehicle.

At the time Act 67 of 1933 was enacted, the amount of the tax was determined by said paragraph (c) of Section 1 of Act 63 of 1931. Said Act 67 of 1933 covers a special

part of a general subject and is therefore controlling as to all matters within its scope which, had it not been enacted, would have been governed by other statutes general in character covering the general subject.

This situation was not changed by the enactment in 1934 of said Section 22 of Act 11. "Where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general." *Washington* v. *Miller*, 235 U. S. 422, at 428; *Kennedy* v. *United States*, 265 U. S. 344, at 346.

It is therefore evident that Act 67 of 1933 was intended by the Legislature to be enforced according to its specific terms and still remains in effect in all respects. Other laws, being now Section 22 of Act 11 of 1934, regulate only the *amount* of the tax.

The last paragraph of the decision of the Circuit Court of Appeals is the following:

> "The decree appealed from is reversed and the court below is directed to enter a decree in favor of the appellant, enjoining the appellee from enforcing the challenged tax against it with respect to all gasoline in the fuel tanks of its interstate busses which is being carried through Arkansas for use in other states."

The effect of that is to prevent the Commissioner from enforcing said Act 67 of 1933. No law exists authorizing the Commissioner to require motor vehicle operators to pay a gasoline tax upon the precise quantity of gasoline used by them upon the State highways or to make and administer any regulation of that kind. The sole authority possessed by the Commissioner in the premises is that conferred by said Act 67 of 1933. That authorization is to require the tax upon all gasoline in the fuel tanks in

excess of twenty gallons. With respect to Dixie Greyhound Lines, Inc., it appears, from the evidence as to the manner in which the company handles its fuel supplies, and it is contended by the company, that there is always a substantial quantity of gasoline in its fuel tanks in excess of twenty gallons, while in Arkansas, which will be used in other States. Thus the court's decision effectively and completely prevents the Commissioner from requiring that the tax be paid on all fuel in the tanks of the busses in excess of twenty gallons; that is, from enforcing Act 67. And the court's decision is based entirely, as the opinion shows, upon its conclusion that Act 67 and part of Act 11 violate the Commerce Clause.

The question involved is a substantial one. The statutes in issue provide the only economical, practical, and effective means whereby the State may collect gasoline tax from many interstate motor carriers using its highways extensively. It is believed that *Bingaman* v. *Golden Eagle Western Lines*, 297 U. S. 626, is authority, among other cases, to sustain the constitutional validity of the Arkansas Acts in question.

Respectfully submitted,

AMOS M. MATHEWS,
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Attorneys for Z. M. McCarroll, Commissioner of Revenues of the State of Arkansas.

EXHIBIT "A".

CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

February 25, 1939.

No. 11284.

DIXIE GREYHOUND LINES, INC.,

vs.

McCARROLL, Com'r. of Revenue.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

Thomas C. Trimble, Judge.

Suit in equity by the Dixie Greybound Lines, Inc., against Z. M. McCarroll, Commissioner of Revenue of the State of Arkansas, to enjoin application of a statute imposing a tax on all gasoline sold or used in the state of Arkansas and taxing all gasoline in excess of twenty gallons carried in the fuel tank of a motor vehicle. From a decree dismissing the bill of complaint, plaintiff appeals.

Reversed, with directions.

A. L. Heiskell, of Memphis, Tenn. (J. H. Shepherd, of Memphis, Tenn., A. L. Barber and E. A. Henry, both of Little Rock, Ark., Chandler, Shepherd, Owen & Heiskell, of Memphis, Tenn., and Barber & Henry, of Little Rock, Ark., on the brief), for appellant.

Louis Tarlowski, of Little Rock, Ark., Sp. Counsel for State of Arkansas (J. Hugh Wharton, of Little Rock, Ark., Atty. for State Revenue Department of Arkansas, on the brief), for appellee.

Before Gardner, Sanborn, and Van Valkenburgh, Circuit Judges.

SANBORN, Circuit Judge:

This is a suit in equity brought by the appellant, a Delaware corporation and a common carrier of passengers by

bus in interstate commerce, against the Commissioner of Revenue of the State of Arkansas, for an injunction against the proposed application to it of Act 11 of the Special Session of the General Assembly of Arkansas of 1934, p. 28, and Act 67 of the General Assembly of Arkansas of 1933, p. 194. Act 11 provides for the imposition of a tax of 6½ cents per gallon on all gasoline sold or used in the State of Arkansas. Act 67 prohibits any person from driving into the State any motor vehicle carrying more than 20 gallons of gasoline in its fuel tank, until the tax upon the excess has been paid. The court below denied an injunction and dismissed the bill of complaint.

The plaintiff in its bill alleged, and the evidence disclosed, that the Commissioner of Revenue was demanding that the appellant pay to the State, under threat of the penalties provided by law, 6½ cents on every gallon of gasoline in excess of 20 gallons which was brought into the State in the fuel tanks of its interstate busses; that the appellant was an interstate carrier by bus, and was duly qualified to operate in Arkansas and other states, and was subject to regulation as to its business and rates as such carrier; that it was a large user of gasoline, the cost of which was necessarily reflected in its rates and charges; that it was necessary to the proper and economical operation of its business that it have storage facilities for gasoline outside of the State of Arkansas; that the erection of such facilities within the State would be uneconomical and wasteful; that because of the distances traversed by its interstate busses in Arkansas and because of the normal gasoline consumption of such busses (5 miles per gallon), it was impractical, inconvenient and dangerous to have such busses enter Arkansas with 20 gallons or less of gasoline in their gas tanks and to rely upon refueling such busses at roadside filling stations in Arkansas; and that, as a result of the threats of the Commissioner, the appellant was placed in the position of having to adopt one of three alternatives: (1) restricting the amount of gasoline in the fuel tanks of interstate busses entering Arkansas to 20 gallons, thereby assuming the risk of road failures, stoppages and inconvenience, and necessitating refueling such busses at road-

side points in Arkansas, with consequent delay, fire hazard, and increased cost of operation; (2) setting up in Arkansas storage facilities for gasoline, at great expense; or (3) paying the tax of 6½ cents on every gallon in excess of 20 gallons brought in Arkansas in the fuel tanks of its interstate busses, regardless of whether such excess was used in the State or not.

The practical operation of the challenged tax as applied to the appellant's business can best be shown by considering its effect upon the appellant in connection with the busses which it operates between Memphis, Tennessee, and St. Louis, Missouri, a distance of 342.7 miles. The appellant maintains storage facilities for gasoline at both of these points, where water transportation is available and gasoline can be purchased in bulk at favorable prices. The appellant pays in Tennessee the taxes imposed by the laws of that State upon the gasoline which it stores in Memphis; it pays in Missouri the taxes on its gasoline stored in St. Louis. The bus leaving Memphis for St. Louis carries in its fuel tank enough gasoline to make the entire trip to St. Louis (approximately 70 gallons). It travels three miles in Tennessee before reaching the Arkansas line. It travels through Arkansas a distance of 77.9 miles, using approximately 16 gallons of gasoline in that State. The remainder of the gasoline in the fuel tank is consumed in traveling from the Arkansas line to St. Louis, a distance of 261.8 miles, upon the highways of Missouri. In returning from St. Louis to Memphis, the bus is fueled at St. Louis. In entering Arkansas it may or may not have in excess of 20 gallons in the fuel tank, depending, of course, upon how many gallons it started with from St. Louis. Assuming that the bus, in traveling each way, had 70 gallons in its fuel tank, it would pay to the State of Arkansas on its trip north a tax on approximately 69 gallons of gasoline, while upon its return it would pay no tax at all, although the wear and tear upon the highways of Arkansas would be the same on each trip.

The appellant does not now contend that the tax of which it complains may not be imposed by the State of Arkansas with respect to gasoline consumed or to be consumed upon

the highways of Arkansas, as compensation for the use of the highways, but it does contend that that State may not impose a tax upon gasoline which is carried in interstate commerce for use in Missouri or Tennessee, because that would constitute a direct and unreasonable burden upon interstate commerce.

(1, 2) The tax in suit is a tax imposed for highway purposes. This is so because the revenues derived from the tax are segregated for such purposes. Moreover, the Supreme Court of Arkansas, in Sparling *v.* Refunding Board, 189 Ark. 189, 71 S. W. 2d, 182, 186, has said that the Arkansas gasoline tax is a "privilege tax, a tax on the privilege of selling and using gasoline in this state, payable at the source * * * for substantially the only available use to which it may be put, for highway travel," and, page 186 of 71 S. W. 2d, "is not a property tax, but is a privilege tax for the use of the highways." Whether that court meant that it was a tax on all gasoline, however used, for the privilege extended to the user of the gasoline of making use of the highways of the State, or was a tax on all gasoline for the benefit of the highways, we think it is not necessary for us to determine. The decision of that court is controlling as to the meaning and extent of the requirements of the taxing act, Hicklin *v.* Coney, 290 U. S. 169, 172, 54 S. Ct. 142, 78 L. Ed. 247, and there can be no question that the tax is imposed for highway purposes.

Reduced to its lowest possible terms, the question for decision, we think, is whether the imposition of the tax upon gasoline carried for use in other states, in the fuel tank of a motor vehicle traveling in interstate commerce can be sustained.

That the tax is a direct burden on interstate commerce, cannot be controverted.

If it is to be sustained at all with respect to gasoline to be used in other states, it must be sustained upon the theory that the method employed for determining the amount of the tax constitutes a fair measure for ascertaining the compensation which lawfully may be exacted by Arkansas from the appellant for the use which it makes of

the highways of the State. In Interstate Transit, Inc., *v.* Lindsey, 283 U. S. 183, 186, 51 S. Ct. 380, 381, 75 L. Ed. 953, the Supreme Court said:

> "As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some ways, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use, Interstate Busses Corp. *v.* Blodgett, 276 U. S. 245, 48 S. Ct. 230, 72 L. Ed. 551, or by the express allocation of the proceeds of the tax to highway purposes as in Clark *v.* Poor, *supra* (274 U. S. 554, 47 S. Ct. 702, 71 L. Ed. 1199) or otherwise. Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory. Hendrick *v.* Maryland, 235 U. S. 610, 642, 35 S. Ct. 140, 59 L. Ed. 385; Interstate Busses Corp. *v.* Blodgett, 276 U. S. 245, 250-252, 48 S. Ct. 230, 72 L. Ed. 551. Compare Interstate Busses Corp. *v.* Holyoke Street R., 273 U. S. 45, 51, 47 S. Ct. 298, 71 L. Ed. 530. But the mere fact that the tax falls upon one who uses the highway is not enough to give it presumptive validity."

While we can understand how the use of state highways by a carrier can be roughly measured by the amount of gasoline which that carrier uses to move its vehicles over the highways, we are unable to comprehend how the use of the highways of one state can appropriately be measured by the amount of gasoline carried in the fuel tank of an interstate carrier for use upon the highways of another state.

We think this case is ruled by Interstate Transit, Inc. *v.* Lindsey, *supra*. There the court had under consideration an act of Tennessee which imposed a tax upon persons operating interstate motor busses on the highways of that State, which tax was graduated according to the passenger-carrying capacity of the busses. The court demonstrated that the tax was not imposed for highway purposes or as com-

pensation for the use of the highways, but was imposed for the privilege of doing business in Tennessee. The court then considered whether the passenger-carrying capacity of a bus was a reasonable measure for determining compensation for use of the highways. It said, in this connection, page 190 of 283 U. S., page 382 of 51 S. Ct.:

> "It is true that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce. Being free to levy occupation taxes, states may tax the privilege of doing an intrastate bus business without regard to whether the charge imposed represents merely a fair compensation for the use of their highways. Compare Gundling *v.* Chicago, 177 U. S. 183, 189, 20 S. Ct. 633, 44 L. Ed. 725. But since a state may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the state. Clark *v.* Poor, *supra.* In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage traveled, or even with the number of passengers actually carried on the highways of the state. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except in so far as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses. We need not therefore consider whether the tax exacted from this appellant is unreasonably large or unjustly discriminatory."

(3) The rule that the measure of the compensation exacted by a state from an interstate carrier for the use of

its highways must have some reasonable relation to the use which that carrier makes of the highways, has not been modified or overruled. It is true that in Hicklin *v.* Coney, 290 U. S. 169, 173, 54 S. Ct. 142, 144, 78 L. Ed. 247, the Supreme Court said:

> "Appellant insists that an undue burden is placed upon interstate commerce because the license fees are based on the 'carrying capacity' of the vehicles. The state court held that the fees 'are collected, as provided for by section 8517, for the purpose of maintaining the public highways over which such motor vehicles shall operate, as compensation for their use.' The statute provides for the segregation, for this purpose, of the moneys collected. See Clark *v.* Poor, 274 U. S. 554, 555-557, 47 S. Ct. 702, 71 L. Ed. 1199. In this view the fees are not open to the objection raised in Interstate Transit, Inc., *v.* Lindsey, 283 U. S. 183, 186, 188, 51 S. Ct. 380, 75 L. Ed. 953. Carrying capacity, the size and weight of trucks, unquestionably have a direct relation to the wear and hazards of the highways. It is for this reason that the authority of the state to impose directly reasonable limitations on the weight and size of vehicles, although applicable to interstate carriers, has been sustained. Morris *v.* Duby, 274 U. S. 135, 143, 47 S. Ct. 548, 71 L. Ed. 966; Sproles *v.* Binford, 286 U. S. 374, 388, 389, 52 S. Ct. 581, 76 L. Ed. 1167. As the state may establish such regulations directly, the state may adjust its license fees, otherwise valid as being reasonable and exacted as compensation for the use of the highways, according to carrying capacity in furtherance of the same purpose. Clark *v.* Poor, *supra.*"

This language we do not regard as modifying Interstate Transit, Inc., *v.* Lindsey, *supra*, which was cited with approval in Aero Mayflower Transit Co. *v.* Georgia Commission, 295 U. S. 285, 289, 55 S. Ct. 709, 79 L. Ed. 1439; Morf *v.* Bingaman, 298 U. S. 407, 410, 56 S. Ct. 756, 80 L. Ed. 1245; Ingels *v.* Morf, 300 U. S. 290, 294, 57 S. Ct. 439, 81 L. Ed. 653.

(4) Since we can perceive no reasonable relation between the amount of gasoline carried through Arkansas in the fuel

tank of an interstate bus for use in states other than Arkansas and the use which that bus makes of the highways of Arkansas, we think that the State was powerless to include such gasoline in measuring the compensation to be paid by the appellant for the use of the highways of the State.

(5) There is, we think, another vice which inheres in this taxing statute as sought to be applied by the taxing authorities. It imposes a direct burden not only upon the interstate commerce done by the appellant in the State of Arkansas, but also upon the interstate commerce which it carries on in other states. By taxing the means whereby a bus makes a through trip from Memphis to St. Louis, the State taxes gasoline which is merely transported through Arkansas for use in interstate commerce in Missouri. The weight of the gasoline is negligible and by no stretch of the imagination can it be said to increase the wear and tear upon the highways of Arkansas. That portion of the gasoline in the fuel tanks of these interstate busses which is intended for use and is used in states other than Arkansas is the medium whereby the appellant carries on interstate commerce in those states. To tax that medium is to directly and unjustifiably burden that commerce. Helson *et al. v.* Kentucky, 279 U. S. 245, 252, 49 S. Ct. 279, 73 L. Ed. 683.

(6) Another consideration which militates against sustaining the sort of tax which Arkansas seeks to exact from the appellant here is that that would open the door to the cumulative taxation of the same gasoline by all states through which an interstate motor vehicle passes. If it were possible for a bus starting from New York City for Los Angeles, California, to carry enough fuel for the entire trip, it might be subjected to such a tax as is here complained of upon the contents of its fuel tank at the borders of each state through which it passed. It is our understanding that, while a state may require an interstate carrier operating within its borders to bear its proportionate share of the burden of government, it may not tax that part of the commerce which is done by that carrier in other states. Fargo *v.* Michigan, 121 U. S. 230, 7 S. Ct. 857, 30 L. Ed. 888; West-

ern Live Stock *v.* Bureau of Revenue, 303 U. S. 250, 255-257, 58 S. Ct. 546, 82 L. Ed. 823, 115 A. L. R. 944.

The decree appealed from is reversed and the court below is directed to enter a decree in favor of the appellant, enjoining the appellee from enforcing the challenged tax against it with respect to all gasoline in the fuel tanks of its interstate busses which is being carried through Arkansas for use in other states.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 13, 1939.